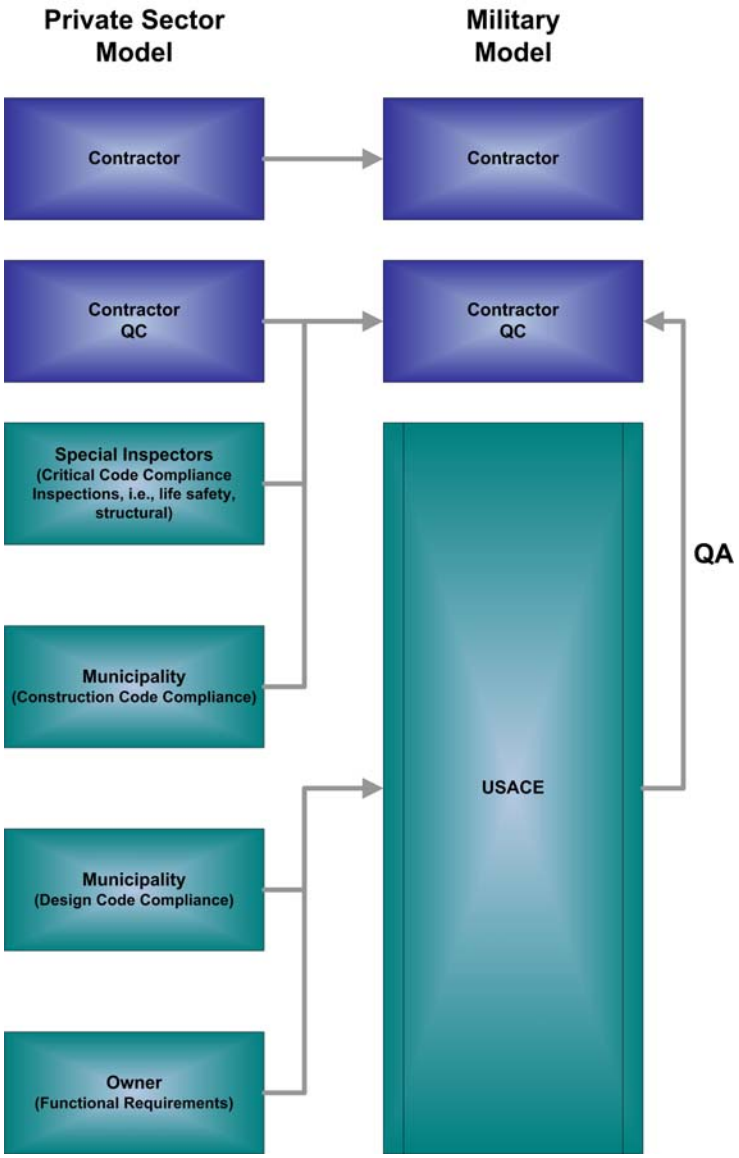
MILCON TRANSFORMATION

US Army Corps of Engineers®

MT MODEL RFP
FIELD EXECUTION GUIDE



(VERSION 1.1)

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1.0 Introduction

1.1 Purpose

The purpose of the Field Execution Guide is to help district and field office personnel understand the Army Transformation (MT) Military Construction (MILCON) Program Request For Proposal (RFP) requirements. Additionally, the guide provides background information that will be helpful understanding the intent of each particular RFP requirement. It includes Do's and Don'ts, as well as recommendations on how the administer the contract. The entire Project Delivery Team (PDT) should be familiar with this guide and the information within it should be shared with the Installation. It is extremely important that all PDT members understand the intent in order to make decisions that will meet the Army's mandates.

1.2 RFP Intent

The model RFP has been developed in an attempt to standardize the design-build (D-B) contract for Army Brigade Combat Team (BCT) facilities. The Two-Phase D-B RFP primarily uses performance-based design-criteria and attempts to streamline the design-build process after award. The intent is to attract the best industry players and to allow them to provide the design and construction solution to meet the Army's needs within reduced budget and time constraints of the MT Program.

Nearly 20 years ago, we were being severely criticized for not adequately addressing our customers' concerns and desires. Assistant Secretary to the Army, Robert Page, implemented a new customer care model that was based on his knowledge and experience as a program manager for a major consulting company. This new model made the Installation the customer of the Corps District and instilled the motto that "the customer is always right". This has created an expectation that the PDTs need to do everything within their power to accommodate more than just the needs of the Installation but also their wants and desires.

Therefore, Installations now mandate the project criteria and functional attributes. The Installations have developed their own specific standards and criteria, which can, and often are, in conflict with Corps/Army guidance. Further, they are often well in excess of conventional industry practices. The Installations feel their requirements are more than simply wants but that they are essential for meeting their mission. In particular, the criterion drives design decisions on architectural appearance and items that affect long term maintenance and operations costs.

Our old customer care model has put us in a compromising position to meet the Installation's requirements and to also keep the project within the ever-tightening budget constraints.

The new customer care model recognizes ACSIM as our primary customer. We have to meet ACSIM's budget and schedule constraints as well as facility design requirements before addressing the Installation's preferences. We will do our best to satisfy our Installation customer consistent with the Department of the Army's requirements as communicated by ACSIM. The best response, is to inform our customers throughout the process so they can see that the goals are consistent and the result will be as well. Industry forums were held throughout the US where the primary frustration expressed by contractors was the inconsistency throughout the Corps, even for similar projects within the same district. In order to create as much consistency as possible, criteria for all facilities and site improvements, as well as solicitation and contract requirements have been developed and are provided by the Model Request for Proposal (RFP).

The RFP criteria in Statement of Work (SOW), Section 01010, are divided into three parts- functional, technical, and site specific. The functional and technical requirements are established by Headquarters- USACE and cannot be modified by the executing Division/District. These criteria are provided in paragraphs 1 and 3 (functional) and paragraph 4-5 (technical). Establishing mandatory SOW criteria provides design criteria consistency and uniformity for the entire program. Paragraph 3, Functional & Operational criteria, is not simply a placeholder for the Army Standard or Standard Design. It is more inline with an architectural program or translation of the standard criteria into a biddable execution package. This includes functional and space adjacencies, narrative facility specific criteria, and concept of operations. Paragraph 6 includes site specific requirements. The "site specific" and "installation specific" part of the SOW is to be modified by the executing Division/District.

2.0 Section 00800 – Special Contract Requirements

This section contains standardized Special Contract Requirements (SCRs) for design-build construction contracts plus SCRs added by the local District for specific projects. There are no FAR clauses to address the unique aspects and non-traditional roles and responsibilities in design-build construction contracts. All FAR clauses for construction have evolved from the traditional roles and responsibilities associated with design-bid-build construction contracts, where the Owner is responsible for the design and for design integration details. Because the D-B RFP includes incidental design services and because the resulting contract includes the selected proposal, additional SCRs have been developed to add to the usual set of SCRs used in design-bid-build, competitively bid (IFB) construction solicitations. The SCRs, listed below, have been specifically developed to define the non-traditional roles and responsibilities of the various parties in the D-B contract. Special Contract Requirements are contained in Section 00800 of the RFP.

2.1 Special Contract Requirements Included in Section 00800 of the Design-Build Contract:

- Design-Build Contract – Order of Precedence
- Proposed Betterments
- Partnering
- Key Personnel, Subcontractors, and Outside Associates or Consultants
- Responsibility of the Contractor for Design
- Warranty of Design (Firm Fixed Price Design-Build Contract)
- Constructor's Role During Design
- Value Engineering After Award
- Deviating From the Accepted Design
- Government-Furnished RFP Drawings, Surveys and Specifications
- Government-Furnished Specifications and Drawings for Construction
- Government Re-Use of Design

- Additional Monthly Incentive Progress Payment
- US Army Corps of Engineers Safety and Health Requirements Manual
- Supplemental Price Breakdown

2.1.1 Design-Build Contract-Order of Precedence

This SCR, originally developed by the Corps of Engineers Research Laboratory (CERL), defines what constitutes the Contract, the order of precedence in the event of inconsistencies, and further states that the design documents produced after award are “deliverables”, not formally part of the contract, themselves.

We do not use the standard clause “ORDER OF PRECEDENCE-UNIFORM CONTRACT FORMAT” (FAR 52.215-8). That Clause is intended for use in service and supply contracts, using the “Uniform Contract Format”. The standard FAR clause places the order of precedence of the proposal above the Section “C”, scope of work (SOW), in the event of inconsistencies or conflicts between the two. The SOW in the UCF format is usually more general in nature than the design and construction criteria in a D-B construction contract.

In design-build construction, we use the opposite philosophy. The RFP is intended to be the minimum standard. However, the Offeror’s best value proposal may exceed the minimum RFP requirements. Then, the “betterment” in the proposal becomes the new minimum standard. In a case where the proposal deviates from the RFP minimum, the RFP minimum requirements take precedence. Thus, the winning proposal may exceed, but must also conform with (cannot deviate from) the minimum RFP requirements. In summary, to qualify for award, a proposal must conform to the RFP minimum requirements, but may offer a betterment, exceeding the minimum specified requirement. In that case, in accordance with the SCR: “DESIGN-BUILD CONTRACT-ORDER OF PRECEDENCE”, upon acceptance and award, the offeror’s proposed betterments become the new minimum contract requirements. For all other requirements, the RFP specifies the minimum acceptable requirements.

This benefit to the Government comes at a price. The Government has an inherent legal duty to carefully read and evaluate the proposal for minimum RFP compliance prior to selection and award. The RFP Section 00110, “PROPOSAL SUBMISSION REQUIREMENTS”, must warn offerors not to deviate from the minimum RFP requirements in their proposals. The description of the basis of award in RFP Section 00120, “PROPOSAL EVALUATION CRITERIA” must explain the requirement for the successful proposal to be in conformance with the RFP requirements. Proposal deviations and deficiencies must be resolved prior to final proposal submission and award. If a proposal deviates from the RFP minimum requirements, but is considered a good idea or approach, the Government will amend the solicitation to allow everyone to propose the feature. This keeps all offerors on a level playing field.

Sometimes, resolving deficiencies associated with desirable, but non-conforming features of a proposal is tricky. If the non-conforming feature is such that allowing everyone to incorporate it into their proposal would reveal the offeror’s technical solution, or that would compromise an offeror’s intellectual property to another offeror (see FAR 15.306(e)(2)), the Government must obtain the offeror’s permission to reveal it to the competition, before amending the RFP to allow it. If the offeror does not agree to reveal the feature, and it does not meet the minimum RFP requirements, the Government would generally be required to inform the offeror that it must correct the proposal to at least meet the minimum RFP specified requirement. If this situation

occurs, it is a good indication that the Government's RFP statement of work or design criteria is too prescriptive and unnecessarily restrictive.

The Government cannot simply rely on the language of the D-B Order of Precedence SCR to avoid careful proposal evaluation. The intent of this clause is to establish an order of precedence in cases of not so obvious conflict, discovered after award, but not to relieve the Government of its inherent responsibility to carefully review material submitted in response to the RFP.

The D-B Order of Precedence SCR defines the design products as "deliverables" under the contract. With the Government's concurrence, the Contractor may correct design errors and otherwise modify the design, as long as the design still complies with the RFP and accepted proposal. Otherwise, every time a line on a drawing or specification detail changes, a modification would be necessary. The Government can otherwise use "configuration control procedures" in Section 01012 (Design after Award) for requests, approval, and tracking of non-contractual changes to the design documents.

As stated above, the SCR defines the accepted proposal and the RFP, as amended at the time of award, as the terms of the contract. The SCR excludes any oral interpretations or agreements, which contradict the meaning of the written documentation, from the contract, unless the contract documents those interpretations or agreements. Therefore it is essential for the field to obtain all of this documentation in order to administer the contract.

2.1.2 Proposed Betterments

This is an optional clause for organizations that wish to use a process to formally list features of the proposal, which are considered "betterments", as defined above. Some Districts feel that it is helpful in administering the contract to highlight all betterments in one list. Note that the proposal independently is part of the contract and that the list is merely administrative in nature. A betterment, which may have been overlooked in the formal list, is nonetheless a contract requirement. A carefully prepared list helps bring betterments to the attention of contract administrators and design reviewers. However, it could also discourage a careful reading of the proposal during contract performance.

2.1.3 Self Performance of Work by the Prime Contractor

It is the public policy of the Government that prime contractors are required to self-perform at least a specified minimum amount of the contract work. For unrestricted awards, this policy is expressed in FAR 36.5. For the various set-asides or price preference programs, these requirements are statutory and the applicable implementing regulations and clauses are often similar, but there are some variations between them. Because this can be confusing, it is difficult to keep up with the distinctions between the requirements.

This SCR is included in generic contract formats that may be used for several types of acquisition, such as unrestricted, unrestricted with HUBZone price preference, 8(a), HUBZone set-aside, etc. This SCR lists the variations and directs the reader to the appropriate clause containing the requirement. During the source selection, the Contractor submitted a form identifying the work it intends to self-perform, based on the appropriate classification of the contractor. The District will provide the Contractor's proposal, including this information to the field office for contract administration. The field office has the responsibility to enforce the contract requirements for self-performed work.

2.1.4 Partnering

Encouraging the Contractor to participate in a partnering process is highly recommended in design-build construction contracts because D-B involves non-traditional roles and responsibilities.

Design or construction issues affect each other in time and cost and the integrated design and construction schedule is very sensitive to delays – especially when fast tracking is involved. The Government must be more responsive to the information, review, and decision needs of the D-B Contractor.

The D-B Contractor should be responsive to the user's functional needs, often expressed in general terms of "design intent" in the RFP. The D-B Contractor may be very flexible with design details, as long as they can be accommodated within the cost and time budgets. Therefore, it is essential that channels of communications and mutual understanding of the other party's needs be facilitated. Partnering can be very effective toward achieving those goals.

Depending upon the size of the job, partnering can be formal or informal. Larger projects can accommodate the costs associated with a formal process. Note that there are various formats in use for Partnering, with various cost sharing schemes.

2.1.5 Key Personnel, Subcontractors and Outside Associates or Consultants

Contract Clause 52.244-4 "Subcontractors and Outside Associates and Consultants" was modified by CERL for Design-Build and Negotiated Acquisitions by adding the term "Key Personnel". The MT team, including construction, contracting and office of counsel, further modified the SCR to explain how proposed substitutions will be evaluated.

The successful Offeror's proposal is part of the contract. This clause is intended to discourage "bid shopping" or "bait and switch" tactics by the Contractor after award of the contract. The Contractor must request permission to substitute those key personnel or key subcontractors it identified in its proposal. The accepted proposal establishes the new minimum standard (assuming that it was in full compliance with the RFP requirements). The Contractor will submit information in the same detail as the original proposal for the Government to evaluate. The Government should not approve any substitute that is not equal in all aspects to the originally proposed person or firm.

Because the contract was formulated by negotiation, prices were considered in the selection of the successful Offeror. It can be argued that the Government may demand a credit for a substitution, as consideration for the switch, where it appears that the substitution is the result of "bid shopping" or "bait and switch" tactics. There is no requirement for a price increase, because the Contractor established the minimum level of competency and the price the Government is expected to pay for that competency in its proposal. The proposal is the new required minimum standard, where identified performance surpassed the minimum RFP requirements. Anti-bid shopping clauses are common and enforceable in State, Local and commercial contracting.

2.1.6 Responsibility of the Contractor for Design

This SCR is derived from FAR Clause 52.236-0023, "Responsibility of the Architect-Engineer Contractor (Apr 1984)". The clause has been re-named for design-build. The words "non-construction services" were added to distinguish design responsibilities from warranty of the construction, which is covered under the "Warranty of Construction Work" SCR. The SCR requires the D-B Contractor to correct the construction resulting from the faulty design. Finally, it incorporates the definition of "Standard of Care" suggested by the DBIA in its Manual of Practice Document Number 510, "Design-Build Contracting Guide" into the Special Contract Requirement: "Responsibility of the Design-Build Contractor for Design." The SCR defines the standard of care which the Government expects from the design-builder for the design, distinguishing between design of features for which the Government provided performance oriented design criteria and design of those features for which the Government specified prescriptive design criteria. For more detailed discussion on this subject, see the next section, entitled WARRANTY OF DESIGN.

2.1.7 Warranty of Design

In order to provide a "single point of responsibility" for integrated design and construction services (one of the primary reasons for selecting design-build as the delivery method), it is necessary to specially address the design warranty in the contract. The standard construction contract clause "Warranty of Construction" only provides for a one year "callback" warranty on materials, installation, and "design furnished." In a standard A-E design contract," the A-E does not warrant that its design will be free of defects or fit for the purposes intended – only that the design meets the prevailing industry standards[1]." The constructor, on a D-B-B contract, "does not face liability if the project does not function as the owner anticipated, since it is only obligated to construct the work in accordance with the design furnished by the owner." Thus, unless the A-E has been negligent, the owner on a design-bid-build project ultimately faces the risk of design defects. This risk not only includes additional cost to upgrade the facility but may include tear-out and re-work costs, as well.

According to the Design-Build Institute of America (DBIA), "when performance specifications are used in design-build contracting, the design-builder is charged with what it does best: developing solutions to the owner's defined needs. When the contract establishes specific performance requirements that can be objectively measured, the design-builder should be obligated to meet such performance requirements, regardless of what the ordinary standard of care in the industry is, relative to such issue."

At the same time, most Government design-build contracts contain some or a lot of "prescriptive" design criteria, which often restrict the design-builder's flexibility and choices in meeting the owner's defined needs, and sometimes even prescribe the required design solution. There is case law confirming that the Government must accept the responsibility for the adequacy of design criteria furnished to the design-builder, including partially completed

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[1, 2, 3] Quoted from the book "Design-Build: Planning Through Development by Jeffrey L. Beard, Michael C. Loulakis Sr., and Edward C. Wundram, McGraw-Hill, 2001, Chapter 14, Section 13 (written by Michael Loulakis).

designs. In that event, the design-builder's liability should generally be limited to 1) the reasonable standard of the industry, based on breach of the standard of care of the industry, and/or 2) failure to comply with the owner's design criteria.

The Federal Acquisition Regulations and the Defense FAR Supplement allow the Government ("chief of the contracting office") to modify the standard FAR clause "Warranty of Construction" to suit the appropriate needs of the acquisition. (See FAR 46.7 and DFARS 246.7). As of May 2006, there is no FAR coverage for the distinctly unique roles and responsibilities of design-build construction contracts. The SCR adapted the DBIA's suggested language for design warranty from DBIA in its Manual of Practice Document Number 510, "Design-Build Contracting Guide", in developing a Warranty of Design SCR for USACE design-build contracts.

2.1.8 Constructor's Role During Design

This SCR outlines the role of the Contractor's key construction management staff during the design process. It is especially necessary to identify this scope of services in ID/IQ contracts.

2.1.9 Value Engineering After Award

This SCR is intended to clarify what the Government will and won't consider after award under Contract Clause, 52.248-3, "VALUE ENGINEERING – CONSTRUCTION."

The Contractor is allowed to submit VE proposals for changes related to those aspects of the RFP that the Government prescribed the design solution or other requirements and that the contractor was not allowed to deviate from in its accepted proposal. The Government won't accept a VECP that revises any aspect of the contract or the proposal that the Contractor developed as its own solution and was thus evaluated during the source selection process. This includes all betterments, regardless of whether or not they were identified during the evaluation process.

2.1.10 Deviating From the Accepted Design

A frequent complaint is that it seems that the design-builder can change its plans and specifications at will, after the Government reviews and concurs with the document. The most common example cited is the D-B Contractor changing the documents to document actual construction, when the actual construction failed to comply with the as-designed construction. This is often after discrepancies have been found by the Government's QA staff or by the D-B's QC staff. Another example is when the D-B Contractor wants to substitute less expensive materials or equipment than that shown in the reviewed and concurred documents.

It should be noted that the plans, specifications, produced after contract award, are not part of the contract. The contract consists of the Government's amended RFP and the Design-Build Contractor's accepted proposal. The design documents are deliverables under the contract. In accordance with the SCR: "Design-Build Order of Precedence", they must conform to the contract requirements. The contract requires the Government's concurrence with the submitted design documents, before construction can proceed.

That said, because the design documents are not part of the contract, the Contractor should be able to make some adjustments in the non-contractual aspects of the design (anything in the design which isn't part of the accepted proposal or does not change the Government's RFP requirements), if it deems it necessary, provided that the changes do not compromise or otherwise impact decisions that the Government has made in operations, and actions taken to

implement those decisions, such as furniture, equipment or furnishings ordered, based on the accepted design documents.

As part of a “comprehensive interior design”, the Government generally makes furniture and furnishing selections, then orders to coincide with “move-in” activities. Once selected, the Contractor should not be allowed to change the design, if it will impact those decisions, without the Government’s concurrence. Another example might be locations of outlets and lighting for Government procured systems furniture, which would have been coordinated with the systems furniture layout scheme.

Of course, the Government has the right to reject any revision which results in a change to the contract.

The SCR states that any Contractor initiated revisions to the accepted drawings, specifications, or other design documentation, which increases the cost to the Contractor, shall be at the Contractor’s expense, not the Government’s. On the other hand, the Contractor has the right to any savings generated by the Government concurred revision, provided that the revision does not change the terms of the contract (the RFP and accepted proposal).

It is absolutely critical, in order to maintain single source of responsibility, that the Contractor be held professionally responsible for the design integrity. The Government intends that the Contractor’s professionally registered Designer of Record (DOR) fulfill this role. In addition to the Government’s concurrence, in order to maintain design integrity and to enhance the DOR’s control and responsibility for design integrity, the contract should require that the DOR must approve any revisions to the reviewed and accepted design documents. The contract also requires that the DOR professionally acknowledge its concurrence with differences between the as-built documentation and the previously submitted drawings and specifications.

The SCR was designed to state the requirements described above and to allow the Contractor some flexibility in meeting the contract requirements. If a Contractor abuses its right to make certain changes, particularly as a result of repeated QA discoveries of non-compliance, the Government should inform the Contractor that its Contractor Quality Control System is deficient or unsatisfactory. The Government should direct the Contractor to take corrective action to address the underlying problems leading to non-compliance with the accepted plans and specifications, and inform the Contractor that the Government may take other management actions allowed by the contract and by the regulations, including replacement of key personnel and/or by reflecting the failure or weakness in the Government’s evaluation of the Contractor’s performance rating of the Contractor.

2.1.11 Government-Furnished RFP Drawings, Surveys and Specifications (Jul 02)

This paragraph is intended to clarify that the standard DFARS clause refers to the RFP documents, not to the Contractor’s design products or proposal.

2.1.12 Government-Furnished Specifications and Drawings for Construction

This paragraph is intended to clarify that the standard DFARS clause refers to the RFP documents, not to the Contractor’s design products or proposal.

2.1.13 Government Re-Use of Design

The contract clause DFARS 252.227.7022- Government Rights Unlimited provides the Government with the right to re-use the Contractor's design on other projects. During the Industry Forums conducted during 2005 for the Army Transformation Program, industry expressed concern that the Government would require additional copies of the design products at no cost and would re-use the design on other projects and try to make the designer or design-builder liable for any design or construction problems encountered with the other site adapted use of the design, without further compensation and without the designer's control and oversight. This SCR is intended to alleviate those concerns.

2.1.14 Additional Monthly Incentive Progress Payment

In order to help incentivize the Contractor to maintain schedule, which is critical to the success of the Transformation Program, the Government will agree to make a second monthly progress payment, if the Contractor maintains progress within 7 days and within 2% of scheduled progress. The Government and the Contractor should meet and agree on estimated mid-month progress, using any reasonable methodology and the Government should retain a copy of the determination for the field office files. The Contractor's payment request must include the required Prompt Payment Certification.

2.1.15 US Army Corps of Engineers Safety and Health Requirements Manual (Mar 06)

This SCR provides the website for EM 385-1-1 and states that interim revisions in effect at the date of the solicitation are a contract requirement.

2.1.16 Supplemental Price Breakdown

In order to evaluate and validate programming and budget assumptions, after Contract award, the District should require the Contractor to provide price breakdown information and forward the information to Headquarters USACE, CECW-CE. The SCR gives the Government the right to ask for this information. Obtain the report format from CECW-CE. The objective is to obtain costs at a building system level consistent with the Uniformat System to validate CECW-CE cost models comparing military costs to private sector building costs. The District is required to report this information to CECW-CE on each MT project.

3.0 Section 01012 – Design after Award

3.1 General Concepts and Principles

Section 01012 is written to facilitate the efficient administration of the design after award process on a design-build construction contract. The section as written does not require editing or modification with the exception of the insertion of the reviewer entities and the number of copies required.

It is imperative that the Resident Engineer (RE) staff, technical support staff, and customers understand the nature and purpose of the design after award. This process represents the Contractors design substantiation that the construction product proposed meets the (RFP) and the final accepted Contractor's proposal. The purpose of the Government review is to assure compliance with the contract, not to redesign the proposal nor impose requirements, preferences, or desires on the Contractor after award.

The Resident Engineer and his/her staff have the responsibility to ensure that the contract is followed. Conversely, the Resident Engineer has a dual role to ensure that customers and technical support staff do not add requirements during design that were not a part of the contract. That said, it is critical to establish a non-adversarial relationship from the earliest interactions with all stakeholders. Cooperation, Coordination, and Communication are the three keys to successful administration of the design after award process.

3.2 Establishing Relationships

The measure of a successful design-build project is the strength of the relationship established during the execution of the contract. Establishing a relationship of trust is the primary focus of early interactions with the Contractor and his/her team after award. There are several considerations in establishing this relationship:

3.2.1 Partnering Process

Partnering is a concept well understood in both private industry and the Corps today. However, for design-build it means more than a meeting where the Contractor and Government do personality tests and generate a Partnering Charter. The concept of partnering is more about establishing a level of trust. The Contractor needs to understand that the Government intends to perform within the parameters outlined in the contract and that we in fact understand the process we are undertaking.

Partnering needs to be a state of mind, not a task that has to be undertaken. The Government staff needs to understand that the DOR working for the Contractor is in fact *the designer* – we have released that responsibility. The DOR will operate within his/her professional ethics to ensure that the product produced is in fact in compliance with our contract and the standard of care that would be provided under any project, no matter the client. Coupled with that is the understanding that the Contractor is doing his/her best to provide the customer with the best possible product, budget and schedule considered. With the current use of Best Value contracting, the contracting community understands that quality products and satisfied customers mean repeat customers – every Contractor understands repeat business means success.

The Resident Engineer shall take the lead in establishing this relationship of trust with the Contractor and his/her staff.

3.3 Procedures for Interface

Design-Build procurements are completed with non-traditional roles and responsibilities for the Government, the Contractor, the Designers, and the Customers. Commercial organizations have many different definitions of what design-build entails. This fact makes it critical to establish the procedures for interface on our contracts.

The Resident Engineer shall establish him/herself as the primary contractual POC for interface with the Contractor. The Contractor shall also establish the primary POC for this contract. The RE shall be cautious to avoid establishing separate relationships with the DOR and the Construction Contractor – remember, there is only one Contractor, one entity, the design-builder, not a Contractor and a designer.

During the Post Award Conference and the Initial Design Meeting the RE and Contractor shall establish the roles/responsibilities for the various parties who will be participating in the design process. The RE shall take the time to document and share these roles/responsibilities with all involved. It is through clear definitions of processes and interfaces that we establish a basis for success.

3.4 Designer of Record (DOR)

A basic tenet of design-build is the DOR. On a design-build contract the DOR has the responsibility to provide technical products which meet the contract at no less than the standard of care within the commercial industry. The key to understanding the DOR concept is that the Government is no longer responsible for the design product produced, that responsibility belongs to the design-build Contractor.

The RE has the ultimate responsibility as the representative of the Government on the contract to make sure that the design-builder retains responsibility for design. This means that the RE shall stay intimately involved during design reviews and management to ensure that Government participants do not direct Contractor design and/or construction solutions. The RE may look to engineering staff or subject matter experts for technical support in this role, but must make sure that this role is addressed throughout the contract.

3.5 Roles/Responsibilities

RE Staff – ensure that the contract requirements are met.

Technical Reviewers – ensure that the design documents meet the requirements of the contract.

Design-Builder (The Contractor) – Provide a facility which meets the performance requirements of the contract.

DOR – Design professionals who prepare design documents to demonstrate prior to construction that the product to be constructed meets the contract and to enable the successful completion of the construction process.

Customer/Installation/etc – Participants in the process and ultimate users/owners of the facilities.

3.6 Design Review Process

To begin – what is the design? The design documents are deliverables on a construction project and do not become part of the contract between the Government and the Contractor. As the design process begins and progresses the RE and his/her staff need to be constantly aware that these documents do not represent contractual documents. For example, RFIs on the design do not come to the Government for resolution; the design-builder/DOR can change the design after completion, etc. Design changes after Government acceptance of final plans and specifications requires coordination and concurrence with the Government.

The design review process after award will not reflect the standard design review process long established within the Corps. The design-build design review process will be more expedited, more focused on contract compliance vs. preferences or designer opinions, and separated into parts/pieces which best suit the design-builder's construction practices and expectations.

3.7 Design Packaging

The decision on the number and content of the design submittals belongs to the Contractor. The RE needs to make every effort to obtain the content and number of submittals anticipated as soon after award as possible.

The Contractor has the right and ability to modify the design package definitions and timelines for submissions as necessary. This section provides guidance that the Government needs a specific notice period for this change, but it is allowed.

The primary role of the RE in design packaging is to distribute the definitions of the packages and the anticipated submittal and review conference dates to all participants in the process. It is only through vigilant schedule attention that the Government reviewers will be poised to provide the design reviews within the expedited windows for review allowed by the contract.

3.8 Over-The-Shoulder Reviews

As discussed earlier, it is imperative that the RE establish a relationship of trust and cooperation with the Contractor and his/her staff. Through the early meetings and discussions it is critical the actual interim and final design review processes be defined and agreed to.

This section provides for over-the-shoulder reviews if acceptable to the Government and the Contractor. The RE shall take the lead in establishing the parameters of the process, for example, where, when, how, etc. Merely agreeing to over-the-shoulder reviews will not be sufficient; the RE must document all decisions and define the process to avoid confusion. The industry is now using various web-based tools to facilitate over-the-shoulder reviews. In a typical OTS process, the design team will regularly post up-dated design documents to a web-site, perhaps in a .pdf format. The design team is also required by the contract to maintain a design configuration management system (DCMS), so that a reviewer can easily track changes to the design during design development, thus speeding up reviews. Thus, for instance, if the designer alters or removes a feature in the design that has been previous incorporated into the design documents, the designer should fully explain this in the DCMS. After the design has been accepted by the Government, the DCMS should fully track the change, along with

documentation of the DOR's approval and the Government's concurrence. The OTS process has the potential to greatly speed up or eliminate the need for the formal design reviews. Once this process becomes routine for government and industry, it is expected that we will formally incorporate it into the contract as a requirement. There is no intent to prescribe the processes used for OTS reviews. The intent is that government and the D-B contractors will develop mutually beneficial processes to facilitate the design process and the design reviews. The bottom line should be to mutually reduce costs and time from start of design to construction completion. To do this requires true partnering spirit and mutual respect for each party's needs.

Remember, the contract DOES NOT require the use of over-the-shoulder reviews. The use of over-the-shoulder reviews must be agreed to by the Government as well as the Contractor. The RE shall do his/her best to facilitate expedited design review processes; however, the process cannot be directed by the Contractor.

3.9 Types of Comments

Design review comments, in their most basic sense, are only provided where the design product provided does not demonstrate compliance with the contract. In this design-build approach, the DOR is responsible for the technical adequacy of the design. The reviewers need to make sure the design complies with the requirements in the RFP and more specifically, that the design is in compliance with current building codes. The Corps technical staff provides the RE with a code compliance review. Then, the RE will release the design documents for construction, as described below.

Designer preference comments, direction to change design, scope additions, and other comments which present information in conflict with or require things not in the contract are NOT ACCEPTABLE comments.

Remember, the DOR has the responsibility for the technical adequacy of the design products – not the Government.

It is also important to remember to make clear and definitive comments. Comments in the form of questions lead to more questions and delay resolution. If something needs to be changed, be specific.

3.10 Design Level of Detail

The design products produced by the DOR will not necessarily be to the same level of detail as produced during traditional design-bid-build processes. The RE and his/her QA staff need to realize that the drawings will be developed to the level necessary to enable the construction forces to construct the facility. Since the DOR does not necessarily have to provide documents suitable for competitive bid, in many cases the drawings and specifications produced will list model numbers and manufacturers, and incorporate vendor specific shop drawings and information.

3.11 Release for Construction

The Contractor's design process results in documents which demonstrate that the Contractor can construct a facility which will meet our contractual requirements. As the Government representative on the contract the RE has the responsibility to allow the construction processes to commence. During the initial meetings the RE shall clearly define for the Contractor the

process he/she will follow to issue a written release for construction. The Contractor has the authority to define the number and type of design packages. It is likely that the RE will be providing multiple releases for construction on the various design packages as they are completed.

As a general rule, the RE should release design packages for construction when all Government comments have been resolved. It should be noted here that the RE needs to ensure that any outstanding Government comments preventing construction start must be comments which reflect direct requirements of the contract which the design package does not adequately address. Discussion items, designer preference, and/or User requested change comments should not be reasons for withholding Contractor release for construction.

3.12 Coordination with Site Specific Concerns

The RE shall be the Point of Coordination with site specific concerns to ensure that the contractor receives the information necessary to complete the design process and facilitate a smooth transition to construction. This coordination would include privatized or government provided utilities interfaces, adjacent construction projects, site access, etc.

Considering the nature and intent of the design-build process, requests of this nature from the Contractor shall be considered a high priority and require a timely response.

3.13 Coordination with US Army Information Systems Engineering Command

USAISEC is the organization that is responsible for US Army Information Systems planning, programming, design, and review for MILCON. The responsible District must coordinate with USAISEC during Design After Award. They must review the RFP before solicitation, as well as design-builder's design prior to construction. POC is Ms. Tina Reed, 301-619-6489, tina.reed@us.army.mil.

Section 01012 - Important Concepts

1. Contractor will be allowed to make multiple submittals (FastTrack)
    a. Shortens the schedule
    b. More economical
2. Process allows concurrent design and construction based on release of design packages for discreet scopes of work. Each design package must be sufficient for construction.
3. The DOR is part of the Contractor's team, USACE is not the DOR
4. The partnering concept continues throughout the project to:
    a. Define and clarify roles and responsibilities
    b. Develop and refine agreed upon procedures
    c. Address over-the-shoulder reviews as an alternative procedure
5. Initial design conference
    a. Critical point in the design process
    b. Thoroughly review the contract (RFP, final accepted proposal, and amendments) prior to meeting
    c. Need to establish a common understanding of the contract/project and the designers approach
    d. Need to address the coordination with the private or government provided utilities with D-B Contractor
    e. Design will proceed quickly after this meeting
6. USACE PM responsible to develop budget for design after award review process
7. The Resident Engineer is responsible for managing the design review process
8. Use either interim or aggressive over-the-shoulder review for design packages
    a. D-B Contractor and government PDT need to collaboratively decide on the interim review process--default is interim submittal
    b. Over-the-shoulder review may be desired to allow more flexibility in meeting project schedule needs (requires flexibility from both parties)
    c. Contractor and Resident Engineers can agree upon over-the-shoulder review process that would allow waiver of interim submittal
    d. Address the life-safety code review issues as early as possible
    e. Include all stakeholders and centers of expertise (COS, ISEC, MCX) in distribution of submittals
    f. Minimal user input will be necessary for DOR to complete design

9. Final design review (per package)
    a. Seven calendar days for review
    b. Only looking for review comments that indicate non-compliance with contract or impending disaster
    c. Only looking for changes since last review and making sure previous commitments, etc. were incorporated
    d. Official code compliance review
    e. List the distribution for final design submittal early
    f. COS shall develop code compliance checklists

10. Review comment management
    a. Assign a single point of responsibility for assembly and QC of Government comments.
    b. Comments should be limited to non-compliance with contract or code
    c. Screen comments for:
        i. Redundancy and / or contradictory comments
        ii. Contract requirements versus stakeholder preferences
        iii. Scope growth
    d. Maintain reviewer focus on review schedule
    e. Establish specific time period for comments
    f. Identify contract/standard reference (page, section, etc.) in comment
    g. Specification formats may be industry standard and not SpecsIntact as allowed by the Contract – that is acceptable
    h. The level of interim and final design drawing detail may not be to the same level as design-bid-build documents -- additional level of detail for as-built purposes are addressed in Section 01780
    i. Be specific with comments or questions
    j. DrChecks will be used for review comment management
    k. Commitments on schedule must be met on both sides—remember the importance of partnering

11. Design released for construction (not approved)

12. Design configuration management (DCM) is the responsibility of the D-B Contractor
    a. Allows government to work in concert with the Contractor as design development proceeds, thus reducing review time
    b. Contractor may use DrChecks as part of the DCM

13. The user interfaces with the design developer at Initial Design Conference and the interim design reviews

14. Design analysis

    a. Submitted to substantiate the design to assist reviewers in determining compliance with contract requirements
    b. Purpose of substantiation is to demonstrate through calculations that the design meets the contract requirements
    c. Intent of design analysis is to provide specific information on *major* project components

15. LEED/SPiRiT Documentation

    a. Substantiate that the final design documents meet the Contractor's proposal to meet LEED/SPiRiT requirements
    b. Verify the required documentation with the contract requirements
    c. Sustainable design approach may also require construction phase requirements which require substantiation

16. Once award is made, the final accepted proposal must be provided to the RE by Contracting.

17. Design and design coordination RFIs are an internal procedure for the Contractor

18. Contractor to government RFIs will be handled through the QCS

19. RE, QA Staff, and all design reviewers need to be familiar with the requirements of the RFP and the proposal, consensus comments, relative to the SID and FFE.

20. When the contract documents are silent, what is reasonable and appropriate for the intended function is expected.

21. If FFE is government furnished, RE should develop guidelines to coordinate with the Contractors schedule and design

4.0 Section 01312 – Quality Control System (QCS)

RMS and QCS are the electronic systems to be used between the Government and the Contractor to facilitate contract administration.

On design submittals, QCS will be used to submit design packages to the Government. All design review comments will be managed and tracked using DRChecks. Final submittal codes will be entered in QCS.

On interim design package submittals, the field office will assign a Receipt Acknowledged code "F". For final design submittal packages acceptance, they will be given a code "R", acceptable for release for construction.

In addition to construction progress payments, the D-B contractor will be submitting design progress payment requests, using QCS.

Any QA activities during the design phase shall be documented in RMS using the RMS QA module. The field office is to enter narratives regarding actions taken during the design process, such as; attendance of design meetings, status of design, results of over-the-shoulder reviews, etc.

5.0 Section 01320 - Schedules

The development and management of the project schedule are critical components of successful project management, and even more critical for fast-tracked design-build (MT Projects). On a design-bid-build project, at the time of project advertisement, there is enough information available for the contractor to develop a detailed construction schedule. However, at the time of design-build contract award there is not enough information available to create a detailed construction schedule for the entire project. Nevertheless, enough information exists to schedule design activities, milestones, submittals, and long-lead procurement items. The contractor will submit a preliminary summary level schedule with his proposal showing that he has integrated design with construction (See RFP 00120, paragraph 7.2.1). The RFP requires that the contractor, subsequent to award and within 40 days, develop an initial schedule with as much detail as is available or known at the time, and to add more detail later as design progresses. This initial schedule should, theoretically, be a more detailed version of the schedule submitted with the proposal. Activities should be included in the initial schedule with as much detail as practical. Initial design conferences and activities and key submittal dates should be identified on the initial schedule. As the design matures and more information is available, more detail is added.

Activity descriptions, predecessors and successors, activity duration, lead and lag time, resource loading, constraints, etc. are done in the same manner as design-bid-build. As part of the design submittal, the contractor is to provide a detailed schedule for the work included in that submittal. This detailed schedule is to be incorporated into the overall project schedule as the design progresses, such that when the design is complete, a detailed schedule exists for construction and turnover of the project. Because of the fast-track design-build approach, the schedule must be managed closely as any delays could cause compounded problems to subsequent activities.

Because the schedule for these projects contain activities related to design, construction, and possibly furnishings, it is important to ensure all parties affected by the schedule are involved in the review process. These include but are not limited to, Design Branch, District Project Manager, Logistics personnel (User, particularly if procuring furnishings), and Construction Division personnel.

Discussions regarding resource loading should be an agenda item during scheduling meetings. If it appears that resource loading will delay submission or approval of the schedule, consideration should be given to whether resource loading should be waived.

6.0 Section 01330 – Submittal Procedures

The Corps of Engineers (COE) is NOT the DOR for the project. The Contractor's designer is the DOR, and as such is responsible for the technical facets of the design. It is not the COE's role to perform design functions, perform an Independent Technical Review (ITR), or to perform those duties/responsibilities that are the DOR's responsibilities.

Reference Section 01330 Paragraph 1.3.1.

- There are four classifications of submittals, DA, GA, FIO, and CR as defined in the specification. DA, GA, and FIO type submittals are construction submittals to be processed during the construction phase of the work. CR's are limited to the contractor's design submittals. Interim design submittals are for information only, and as such these submittals will receive an "F" or "Fx" action as appropriate. Final design submittals are provided for government review and upon the documents being determined acceptable for release for construction, will receive an "R" action.

- The government is not required, nor is such intended, to review all submittals.

- Except for GA submittals (to include deviations to the contract or accepted design), the contractor is permitted to proceed with procurement/acquisition and installation of materials upon approval of the associated submittals by the DOR (or FIO submittals).

- With regards to deviations to the accepted design that still comply with the contract (RFP and accepted proposal), the government has the right to non-concur with the deviation if such deviation will create an impact to the government due to commitments made by the government based upon the accepted design. For example, if the government has initiated actions for procurement of equipment, furniture, or services based upon the accepted design that would now impact (time and/or cost) the government to make changes to the applicable commitments, the government can non-concur to the deviation and require the contractor to perform in accordance with previously accepted design. However, if there are no associated costs to the government and the contractor's deviation(s) still comply with the contract, the government has no basis to non-concur with the proposed changes to the design.

Reference Section 01330 Paragraph 1.3.2.

- The government's role with regards to submittal approval is VERY limited. In general, the government's approval is limited to those submittals specifically identified in the contract, and deviations to the contract and/or accepted design. Under limited circumstances, the government may request additional submittals for government approval regarding critical code conformity and life safety issues; however, this contingency is NOT intended for the government to take on the DOR's role in submittal review/approval.

Reference Section 01330 Paragraph 1.3.3.

- The government's review of the design submittals is limited to code conformance and contract compliance. This review is not intended to be an ITR or an opportunity for the various reviewers to comment with regards to "designer preference" type matters.

Reference Section 01330 Paragraph 1.7.

- With regards to the provision permitting the government to require submittals in addition to those outlined in the contract, such should be done only under extenuating circumstances. Such situations should be limited to critical code conformity and life safety issues. This contingency is NOT intended for the government to take on the DOR's role in submittal review/approval.

Reference Section 01330 Paragraph 1.8.

- The DOR, not the COE, has the responsibility to develop the submittal register. It is the DOR's responsibility to identify those additional submittals (in addition to those outlined in the contract) necessary for review and approval by all parties. It is not intended or appropriate for the COE to review the DOR's proposed submittal register and edit submittals categories to GA submittals.

- The submittal register is intended as a "living document" to be updated and expanded as the design proceeds. Each design package shall include those submittal register additions as they relate to the design package being submitted. Once approved, those additions will be consolidated into the existing submittal register.

Reference Section 01330 Paragraph 1.9.

- The contractor is responsible for any cost and/or schedule impacts due to late submission of a submittal by the contractor. However, the government is liable for any cost and/or schedule impacts caused due to the government's delinquency in review and approval of GA submittals.

Reference Section 01330 Paragraph 1.10.

- It is recognized, should the contractor choose to use a commercial specification development program in lieu of UFGS, the submittal register will not be automatically created such to permit direct upload into QCS. In such situations, the submittal register will need to be independently developed by the contractor/DOR and uploaded to QCS.

7.0 Section 01355 - Environmental

Reference the RFP for guidance. The Government will provide a clean site to the Contractor. Permits necessary for construction are the responsibility of the Contractor.

8.0 Section 01451 – Contractor Quality Control (CQC)

The Contractor's organization and quality approach is a consideration in selecting the short list competing for the contract and is also reflected in their past performance. It is stressed that past performance will be a significant rating factor on this project.

Contractor Quality Control encompasses the entire project, both design and construction. The Contractor will assign a CQC System Manager who will have the primary responsibility for quality control. A Design Quality Manager will also be responsible for ensuring quality for the design performance. The key individual responsible for the design preparation is the DOR.

Quality Control will be performed to ensure compliance with International Building Codes (IBC). Further, Chapter 17 (Structural Tests and Special Inspections) of the International Building Code recommends special inspections. The intent of these inspections is to provide additional expertise during the inspection process to ensure compliance with approved construction documents and referenced standards on materials, installation, fabrication, erection, and placement of components and connections on the following phases of work:

- Where fabrication of structural load-bearing members and assemblies is being performed on the premises of a fabricator's shop;
- Steel elements of buildings and structures, including welding and high-strength bolts installation;
- Concrete;
- Masonry, depending on the classification of the building or structure or nature of occupancy;
- Wood construction, for fabrication process of prefabricated wood structural elements and assemblies;
- Soils – existing soils conditions, fill placement, and load-bearing requirements;
- Pile Foundation, when being installed and tested;
- Pier foundation for buildings assigned to Seismic Design Category C, D, E, or F;
- Wall panels and veneers (exterior and interior) assigned to Seismic Design Category E or F;
- Sprayed fire-resistant materials applied to structural elements and decks;
- Exterior Insulation and Finish Systems (EIFS); and,
- Special inspections for proposed work that is, in the opinion of the building official, unusual in its nature.

The DOR will be responsible for the design and will provide a listing of tests and special inspections that must be performed during the construction, in accordance with the applicable Codes and Standards referenced in the contract. The Contractor will schedule these quality control requirements through the scheduling and submittal requirements in the Resident Management System (RMS) Quality Control System (QCS).

The Contractor will perform Quality Control utilizing the USACE Three-Phase process of Contractor Quality Control. The Contractor's construction Quality Control Team will include the CQC System Manager and any additional personnel required to perform the requirements and insure the quality. The contractor shall provide as part of the CQC organization specialized personnel to assist the CQC System Manager as required to assure contract compliance. These specialized individuals are not intended to be full time, but must be on site at the beginning of the phase of work, including preparatory inspections, and during necessary inspections to ensure the quality and that all work complies with the contract. One person may cover multiple areas provided they are qualified to perform those QC activities.

The Quality Control Staff qualifications will be determined by the CQC Manager at the discretion of the Contracting Officer. Qualifications will be generally based on a graduate degree with five years experience, or engineer technician with five years experience, or an individual with related International Code Council (ICC) certification and five years experience in the type of work being performed on the contract.

It is important to point out, that the ICC has specific requirements for certification of the special inspectors. More specifically, the requirements for the **Reinforced Concrete Special Inspector**. In order for someone to receive this certification, he/she must meet the following requirements.

1. Obtain the Certification of Completion by passing the ICC Reinforced Concrete Special Inspector certification exam;

2. Obtain certification by ACI as an ACI Concrete Field Testing Technician - Grade I; and achieve the Associate Reinforced Concrete Special Inspector Certification; then,

3. Meet one of the following three Education/Work experience requirements:

1) Two years of verified college or technical school (copy of diploma or transcript required) **and** two years of verified work experience in reinforced concrete construction inspection.

2) High-school or equivalent graduate (copy of diploma or certificate required) **and** three years of verified work experience in reinforced concrete construction inspection.

3) Five years of verified work experience in reinforced concrete construction inspection.

4. Provide verification of the work experience:

1) Work experience must include decision-making responsibility and authority; verification of compliance with plans, specifications and codes; evaluation of reinforced concrete construction in the field; and documentation and reporting of inspection results. Inspection experience must include the following: formwork installation, reinforcements, embedments; sampling and testing of freshly mixed concrete; conveying, placing, consolidating, finishing and jointing; curing protection and formwork removal.

2) Submit copies of the form describing the experience along with the **Information for Respondent** sheet to their present and/or former employers, who are called **Respondents**. Send this form to as many Respondents as needed to prove the amount of work experience that applies to their particular situation as described above.

Quality Assurance personnel will be encouraged to enhance their skills and professional credentials through accomplishing International Building Code (IBC) training and ICC certifications. District and field Office Quality Assurance Plans will be modified to add these requirements. Individual Development Plans IDPs will be amplified to better prepare field office and district personnel in the International Building Code requirements.

9.0 Section 01500 – Temporary Construction Facilities

Typical project and safety sign details are not provided in the RFP. Provide the latest details available at the Post-Award Conference.

10.0 Section 01780 – Closeout Submittal

Follow Section 01780, Design-Build Project Close Out.

Pay special attention to paragraphs:

1.2.5, As-Built Conditions That are Different from the Contract Drawings

1.2.6, Additional As-Built Information That Exceeds the Detail Shown on the Contract Drawing.

As-Built information requirements will most likely exceed the detail that was shown in the Design-Builder's construction drawings. See examples in 1.2.6.

Some performance problems related to the design may not be recognized until the construction warranty period is over. See contract special requirements "MT RFP Implementation Guide" for responsibility of the contractor for the design and warranty of design. These requirements make the contractor responsible to meet the performance requirements specified in the contract for an extended period based on the statute of limitations and statute of repose for the State that the facility is located in. Need to contact Office of Counsel to determine the applicable periods for reporting design warranty problems. If the user encounters such problems, the Corps must make a determination whether it is covered under the warranty of design clause. If it is covered, the contractor is responsible to correct both the design and related construction.

O&M Manual completion is a requirement at substantial completion with regards to government acceptance and assessment of liquidated damages. (Refer to paragraph 1.6.1.1)

Field Training is a requirement for substantial completion and must be recorded on DVD. (Refer to paragraph 1.6.9)

LEED Documentation is required to be submitted to verify the Registered Project Checklist, the final LEED score, and to establish the final rating.